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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 180

HOLYOKE WATER POWER COMPANY, PETITIONER

v.

AMERICAN WRITING PAPER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The immediate issue in this case is whether the petitioner and other creditors holding similar obligations are entitled to a more favorable position with respect to their claims than the holders of gold clause obligations like those considered by this Court in *Norman v. Baltimore and Ohio Railroad Co.*, 294 U. S. 240.[1] The Government submits

[1] The following gold clause is typical of those contained in the indentures involved in this case (R. 18, 22):

"* * * yielding and *paying* to the said Holyoke Water Company and its successors and assigns forever, as rent for each of the first three 24 hour non-permanent mill-powers above granted a quantity of gold which shall be equal in amount to fifteen hundred ($1500) dollars of the gold coin of the United States of the standard of weight and fineness of the coinage of the year one thousand eight hundred and ninety-four, or the equivalent of this commodity in United States currency, for each and every year, *payable* in equal semiannual payments." [Italics supplied.]

that such a distinction among creditors having gold clause obligations would be in the teeth of the policy of Congress as embodied in the Joint Resolution of June 5, 1933 (*infra*, p. 23), and is in no way compelled by the Constitution. If the argument of petitioner were to be accepted, the power of Congress over the monetary system would be frustrated by essentially the same type of private arrangements which this Court in the *Norman* case held had been brought within the control of Congress by the Joint Resolution. If the argument of petitioner is sound, the result would be that a slight variant in the form of gold clauses would serve to nullify the effort of Congress, sustained in the *Norman* case, to assure for the country a single and uniform system of money. In support of the view that such a result, which must be regarded with apprehension, was validly forestalled by Congress, the United States submits the following considerations as *amicus curiae*.

I.

THE JOINT RESOLUTION SHOULD BE CONSTRUED TO APPLY TO THE GOLD CLAUSES INVOLVED IN THIS CASE

The Resolution must be construed in the light of its purpose and the situation to which it was directed. The history of the Acts, orders, and regulations relating to gold and foreign exchange was considered and described by this Court in the Gold Clause Cases. As recognized in the *Norman*

case, *supra*, the broad Congressional policies underlying that legislation were:

> 1. The determination of the value of the standard unit of currency, both in its domestic aspects and in relation to foreign currencies;
>
> 2. The establishment of a uniform currency, with parity among the various kinds of currency, and the making of that currency dollar for dollar legal tender for the payment of debts; and
>
> 3. The conservation of the gold resources of the Government, the insurance of its command of gold in order to protect and to increase its reserves, and the prohibition of the exportation of gold or its use for any purpose inconsistent with the needs of the Government.

In effectuating these policies, the Congress deemed it necessary to, and did, regulate gold bullion as well as gold coin. It will be recalled that all of the gold Acts, orders and regulations dealt with both gold bullion and gold coin (294 U. S. at 295–297). This purpose of the Congress to control the use of gold whether in the form of bullion or coin is made entirely clear by the preamble to the Resolution, which reads as follows:

> Whereas the *holding of or dealing in gold* affect the public interest, and are therefore subject to proper regulation and restriction; and
>
> Whereas the existing emergency has disclosed that provisions of obligations which

> purport to give the obligee a right to require *payment in gold* or a particular kind of coin or currency of the United States, *or in an amount in money of the United States measured thereby,* obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. [Italics supplied.]

It is evident that the Congress could not have effectuated its policies unless it intended by the Resolution to strike down gold bullion clauses as well as gold coin clauses, designed to provide for payment where the gold was used as the mode of payment or the measure of the amount of payment in money of the United States. Gold clauses like the present constituted the same obstruction to the exercise of the monetary powers as the gold clause involved in the *Norman* case. The typical gold clause in this case called for payment of a quantity of gold equal in amount to 1500 United States gold coin dollars, or the equivalent in United States currency. Whether such a promise is to be taken literally as calling for payment in gold or is to be treated as a gold value clause, it is directly opposed to the monetary program of the Congress which the Resolution was designed to safeguard.

Prior to the enactment of the Resolution, Congress had provided by Section 43 of the Act of May

12, 1933 (c. 25, 48 Stat. 51) that the President should have authority to reduce the weight of the gold dollar and that the weight as so fixed should be the standard unit of value with which all forms of money should be maintained at a parity. Beginning in April, 1933, gold coin and gold bullion were in the process of being requisitioned by the Government, and the value of the dollar in the foreign exchange markets was declining. Accordingly, although at the time of the passage of the Resolution the dollar had not yet been devalued, "devaluation was in prospect and a uniform currency was intended." *Norman* v. *Baltimore & Ohio Railroad Co., supra,* at p. 314. The disparity of conditions and the dislocation of the national economy which would have resulted if gold clause obligations had not been stricken down were described by this Court in the *Norman* case.

The same disparity and dislocation would be produced by the type of gold clause involved in the present case as by the type involved in the *Norman* case. The petitioner here, like the creditor in the *Norman* case, contends that, while the income of the debtor is necessarily determined by the new standard, the indebtedness of the debtor on its gold clause obligations "must be met by an amount of currency determined by the former gold standard" (294 U. S. at 315). Because the standard unit of value in this country is defined in terms of grains of gold, the potential dislocation of the domestic economy described in the *Norman* case would exist as fully

where the obligation to pay dollars is measured by gold as where it is measured by gold coin.

The petitioner admits that the purpose of this contract was "akin" to the purpose of the contracts before this Court in the *Norman* case (Pet. brief, p. 18). In the *Norman* case the Court said (p. 302): "We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money." It is clear that the gold clause in the present case was used not because the obligee desired to contract with respect to something other than United States currency, but because the obligee hoped to escape the consequences of the future exercise by the Congress of its monetary powers. To attribute different consequences to the gold clause used in this case than were attributed to the gold clauses considered in the *Norman* case, though the purposes of all such gold clauses were admittedly the same, would be to invest the use of one or two additional words with a kind of magic potency sufficient to nullify the ends validly sought to be accomplished by the Congress in the Joint Resolution.

Necessarily, the Congress intended to cover both types of gold clauses in order to provide a uniform and equitable settlement of all money obligations. Otherwise there must be imputed to Congress an intention to permit inequities to result from the revaluation of the dollar, and to sanction thereafter the use of a gold clause which would nullify

the purposes sought to be attained by the Resolution. Had Congress permitted the continued use of such gold clauses, the result would have been an obstruction to the exercise by Congress not only of its power to decrease the gold content of the dollar, but also of its power to increase the gold content of the dollar, since to enforce gold clauses in the latter situation would reduce the value of gold clause obligations to the creditor in relation to simple dollar obligations, and so would create, *pro tanto*, a dual monetary economy.

The intention of Congress appears clearly both from the preamble of the Resolution, which has been quoted, and from the operative provisions. The Resolution strikes down as against public policy clauses which "require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby."[2] The language is comprehensive. Con-

[2] The Congress in Sections 2 and 3 of the Act of March 9, 1933 (48 Stat. 1), used the terms "gold * * * coin or bullion", and "gold coin, gold bullion", when it intended to reach limited classes of gold, and used the term "gold" in referring both to coin and bullion. *Cf.* also U. S. C., Title 31, secs. 311, 327, 428, 429, and 430. The Congress also used the generic term "gold" in Section 3 of the Gold Reserve Act of 1934 (R. 65–66) when it wished to describe gold in all of its forms and conditions, including gold bullion as well as gold coin. See also Sections 6–10, 14 (c), and 15 of the Gold Reserve Act of 1934 (R. 66–69, 72). (48 Stat. 340–344). Such use by Congress of the terms "gold", "gold coin", and "gold bullion" in related monetary legislation makes it clear that the term "gold" as used in the Resolution was to be all-inclusive and not limited in its meaning to gold coin.

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gress used the world "gold" in the Resolution as an inclusive term which would reach any contracts calling for payment where gold in any form was used as the mode of payment or the measure of the amount of payment in money of the United States.

The Resolution, in dealing with gold clauses, was limited to the striking down of gold payment clauses, doubtless because it was felt by Congress that *bona fide* contracts calling for the sale or delivery of gold for industrial purposes (such as to a manufacturer of jewelry by a person engaged in the business of supplying gold for such purposes) did not then constitute an interference with, or an obstruction to, the exercise of the Congressional monetary powers. But by eliminating from the scope of the Resolution the non-monetary type of gold bullion contract, Congress did not also intend to, and did not, eliminate from the scope of the Resolution gold *payment* clauses where gold is used as the mode of payment or measure of the amount of payment in money of the United States.

The Resolution should be construed liberally to effectuate its spirit and purpose. This would be true even though the letter of the Act did not clearly cover the case at hand. *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 464–465, and cases cited; *United States* v. *Wiley*, 11 Wall. 508; *Stewart* v. *Kahn*, 11 Wall. 493; *Smythe* v. *Fiske*, 23 Wall. 374; *Hawaii* v. *Mankichi*, 190 U. S. 197; *Gooch* v. *Oregon Short Line*, 258 U. S. 22, citing

Johnson v. *United States*, 163 Fed. 30; *Barrett* v. *Van Pelt*, 268 U. S. 85; *Fleischmann Construction Company et al.* v. *United States to the use of Forsberg et al.*, 270 U. S. 349; *Danovitz, Surviving Partner of Feitler Bottle Company* v. *United States*, 281 U. S. 389; *Spencer* v. *Myers*, 150 N. Y. 269, 273–275.

The language of the Resolution is comprehensive. With respect to gold clauses, it reveals an intention "to stop the whole business" as did the Eighteenth Amendment with respect to the traffic in liquor. Cf. *Grogan* v. *Walker & Sons*, 259 U. S. 80, 89; *Danovitz* v. *United States*, 281 U. S. 389, 397. Like the provisions of the Revenue Acts with respect to the taxation of gross income, the Resolution discloses an intention by Congress "to use its power to the full extent." *Douglas* v. *Willcuts*, 296 U. S. 1, 9, and cases cited.

But there is no need here to invoke this principle of construction, for the present obligations fall squarely within the letter of the Resolution. They are obligations payable, on their face, in gold or at the option of the debtor (R. 97) in an "equivalent" amount of currency, that is, an amount in money of the United States measured by gold, within the precise terms of the Resolution. The argument of petitioner that "gold" as used in the Resolution means "United States gold coin" would make the use of the term "gold" superfluous, since obviously gold coin is included within the subse-

quent phrase "a particular kind of coin or currency."[3]

Petitioner stresses the definition of obligation in the Resolution as limited to obligations "payable in money of the United States." But the present indenture is clearly such an obligation. The indenture must be read as a whole to determine whether in fact it is an obligation payable in money or is one to deliver a commodity. The answer, it seems to us, is plain. The obligation was payable at all times in money, particularly since the obligor admittedly had the option to pay in currency and the stipulated gold was used as a measure of value. At the due dates of payment, as the court below pointed out, payment in currency was the only possible method of performance. But even if the alternative to pay "a quantity of gold which shall be equal in amount to fifteen hundred ($1,500) dollars of the gold coin of the United States of the standard of weight and fineness of the coinage of the year 1894" be viewed in isolation, it is an obligation payable in money of the United States, not only because gold is used as the measure of value but because the obligation was capable of

[3] The report of the House Committee on Banking and Currency, dealing with the Resolution (H. Rep. 169, 73d Cong., 1st Sess., p. 1), states: "The resolution * * * provides that obligations, public and private, expressed to be *payable in gold or in a specific coin or currency*, may be discharged dollar for dollar in legal tender." [Italics supplied.] To the same effect, see 77 Cong. Rec., pp. 4528–4532 (remarks of Chairman Steagall).

being discharged by payment of the stipulated gold coin of the old standard. Indeed, such payment would have been the most meticulous performance of that alternative. That the parties were dealing in terms of a money obligation is apparent also from the provision in the indentures that the obligor shall *pay* (not deliver) the stipulated rental (see note 1, p. 1, *supra*).[4] But *cf.* Pet. brief, p. 13.

The use of the appellation "this commodity" can not alter the nature of the obligation as disclosed by its operative provisions. In this regard private parties stand on no better footing than legislatures, which can not, for example, by mere designation change the essential character of an exaction. Cf. *Lipke* v. *Lederer,* 259 U. S. 557, 561–562.

Even if petitioner were correct in narrowly construing the word "gold" in the Resolution to mean "United States gold coin", the present obligations would be covered. As already stated, the alternative of payment in "a quantity of gold", etc., was performable by payment in gold coin; but in any event that alternative became impossible and the contract is one for payment in currency. The debtor has in fact exercised its option so to pay.

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[4] Even at the time of the institution of this suit the petitioner was thinking in terms of *payment.* Throughout its petition herein in the District Court the word "payment" is used in connection with the rentals prescribed under the indentures (R. 4–8).

And the "equivalent" in currency designated in the indentures is measured by gold coin, for the amount of gold by which it is measured is in turn measured by "1500 dollars of United States gold coin" of the then standard of weight and fineness. Thus, even on petitioner's narrow construction of the Resolution, which we submit is unwarranted, the obligation, payable in an amount of money measured by gold coin, comes squarely within the Resolution.

Petitioner stresses also the provision in the Resolution providing for discharge of obligations "dollar for dollar." Petitioner suggests that the "dollar for dollar" provision should be applied to the obligation to pay in currency only after the "equivalent" has been determined in accordance with petitioner's view. Such an application of the "dollar for dollar" provision in the Resolution would, of course, be wholly subversive of its purpose. By successive orders pursuant to the Act of March 9, 1933 (48 Stat. 1), persons generally were required to surrender gold at $20.67 an ounce (R. 83), in accordance with Section 3 of that Act providing for payment in "an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States"; and persons were precluded generally from acquiring gold. See also Gold Reserve Act of 1934, Section 13 (R. 71). The Joint Resolution sought to deal similarly with claims to gold, and claims measured by gold, payable in the future. The Resolution sought to

assure that persons indebted on gold clause obligations would not be required, as a result of the requisitioning of gold and the decrease in the gold content of the dollar theretofore authorized, to pay more in dollars than they would have been required to pay in the absence of such requisitioning and revaluation. The "dollar for dollar" provision is a short expression declaring the intent of Congress that payment should be unaffected by clauses purporting to vary the dollar amount of the obligation according to changes in the value of gold. There is no practical difficulty in applying the "dollar for dollar" provision in the present case, as the brief of the respondent clearly demonstrates (pp. 21 to 22). It is no more difficult to determine the "dollar for dollar" amount of the obligation than it is to determine the increased amount of the obligation based upon petitioner's own contention.

More extended discussion of the application of the Resolution to the present obligations is not deemed necessary in view of the full treatment of the point contained in the brief of respondent (pp. 9–22).

In its larger aspect, wherever there is an attempt by parties to a contract to provide for payment in such a way that there is a translation or parallel set up between gold in any form on the one hand and coin or currency of the United States on the other, there is, *pro tanto,* an attempt to obstruct by private contract the undoubted power of the Congress to provide by legislation the relation between

gold and coin or currency of the United States. Wherever that situation exists Congress sought to strike it down by the Resolution. Wherever that situation exists the courts, it is submitted, will be zealous to sustain the undivided control placed by the Constitution in, and now effectively exercised by, the Congress.

II

THE JOINT RESOLUTION CONSTRUED TO STRIKE DOWN THE GOLD CLAUSES IN THIS CASE IS CONSTITUTIONAL

This Court has in a long line of cases recognized that "the Congress has complete authority to regulate the currency system of the country". *Nortz* v. *United States*, 294 U. S. 317, 328. See *Veazie Bank* v. *Fenno*, 8 Wall. 533; *Knox* v. *Lee*, 12 Wall. 457; *Juilliard* v. *Greenman*, 110 U. S. 421; *Ling Su Fan* v. *United States*, 218 U. S. 302; *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240; *Perry* v. *United States*, 294 U. S. 330. This includes the power (1) to regulate the value of the standard unit of currency by providing for its valuation in terms of gold; (2) to establish a uniform currency, with parity among the various kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts; and (3) to conserve the gold reserves of the Government, to insure its command of gold in order to protect and increase these reserves, and to prohibit the exportation of gold or its use for any purpose

inconsistent with the needs of the Government. *Norman* v. *Baltimore & Ohio R. R. Co., supra.*

As heretofore stated, the Congress deemed it essential for the proper exercise of its monetary powers to regulate gold bullion as well as gold coin; and the laws, orders, and regulations relating to gold did, in effect, regulate gold bullion as fully as they regulated gold coin. That the powers of the Congress extend to regulation of the use of gold bullion as well as of gold coin may not be successfully challenged. In *Nortz* v. *United States*, 294 U. S. 317, 329, this Court said:

> Plaintiff explicitly states his concurrence in the Government's contention that the Congress has complete authority to regulate the currency system of the country. He does not deny that, in exercising that authority, the Congress had power "to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates." Nor does he deny that the Congress had authority "to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession." These powers could not be successfully challenged. *Knox* v. *Lee*, 12 Wall. 457; *Juilliard* v. *Greenman*, 110 U. S. 421; *Ling Su Fan* v. *United States*, 218 U. S. 302; *Norman* v. *Baltimore & Ohio R. Co.*, decided this day, *ante*, p. 240.

As gold is subject to the power of Congress equally with gold coin, so contracts for payment in

gold or in an amount of money measured thereby are subject to a "congenital infirmity" (*Norman v. Baltimore & Ohio R. R. Co., supra*, at p. 308) equally with contracts for payment in gold coin or in an amount of money measured thereby. This is true particularly because of the fundamental relation which gold bears to the value of the dollar as fixed by Congress. For many years gold bullion was convertible at the mints into gold coin, and gold coin was exchangeable for bullion. 31 U. S. C., Sections 326, 327, 333. Gold bullion was exchangeable also for gold certificates, which were a part of the national currency. *Nortz v. United States*, 294 U. S. 317, 326. The standard unit of value has been fixed and is still fixed in terms of a stated number of grains of gold of a designated weight and fineness. That standard, or relation between gold and dollars, is meant to be uniform; and the continuing power of Congress to fix that standard or relation is not to be thwarted by private agreements purporting to establish a separate, and particularly a countervailing, relation. This, it seems plain, is the basis of the decision in the *Norman* case. The reasoning is applicable in at least as fundamental a sense where gold, instead of gold coin, is sought to be used by the parties in fixing the mode or measure of payment.

If gold clauses such as the one in this case are treated as "gold value" clauses, that is, as intended to set up a measure of the amount of payment if

gold is not paid or is not available, the language used by this Court in the *Norman* case at pages 314 to 316 is fully applicable as showing that such clauses are "hostile to the policy of the Congress and hence subject to prohibition". The measure of value set up by the present clauses is precisely the same as if the reference in the indentures had been solely to gold coin. Contracts payable in gold or in an amount in money of the United States measured thereby interfere not only with the Congressional power to reduce the gold content of the unit of value, but also with the Congressional power to increase the gold content of the unit of value, in which case the creditor rather than the debtor would claim that he is injured. See p. 7, *supra*.

If, on the other hand, gold clauses like the present "were to be taken literally, as calling for the actual payment" in gold, "they would be directly opposed to the policy of Congress, as they would be calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of" gold. *Norman* v. *Baltimore & Ohio R. R. Co., supra,* at page 313.

Since such gold clauses interfere with the exercise by the Congress of its constitutional authority the Congress has the power to invalidate them. *Norman* v. *Baltimore & Ohio R. R. Co., supra.* The Chief Justice, in the *Norman* case, said (pp. 307–308):

> Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but

> when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

And again (at pp. 309-310):

> There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.

The action of the Congress in striking down these gold clauses is not arbitrary or capricious, but has a reasonable relation to a legitimate end. The number of gold clauses similar to those in this case, and the dollar amounts involved in such clauses, is not a matter of common knowledge which may be judicially noticed. No evidence was introduced on this point by the petitioner, who had the burden of establishing, if it be the fact, that the number of such contracts is small. But even if it were true that there are outstanding only a small number of contracts containing gold clauses of the type involved herein, nevertheless such gold clauses are obstructions to the policy of Congress and must be stricken down if Congress is to exercise its power over gold clauses generally, and if it is to deal uniformly and equally with all gold clause money contracts having as their basis the same fundamental purpose, namely, to attempt to

nullify, in individual cases, an increase or reduction of the gold content of the unit of value.

In *Philadelphia, Baltimore and Washington Railroad Company* v. *Schubert*, 224 U. S. 603, the basis of Congressional power in these circumstances was thus stated by the Court (pp. 613, 614):

> Nor can the further contention be sustained that, if so construed [as applying to existing contracts], the section is invalid. The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. To subordinate the exercise of the Federal authority *to the continuing operation of previous contracts*, would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish *uniform* rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. Prior arrangements were necessarily subject to this paramount authority. [Italics supplied.]

See also *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467.

To distinguish between various types of gold clauses having the same fundamental purpose and effect would result in unwarranted inequities, increasing the burdens on some and giving an unjust enrichment to others. Furthermore, to conclude that the Congress is without power over gold clauses of the type here involved would be to nullify the powers of the Congress over the currency, recognized by this Court in the Gold Clause cases.

Mr. Justice Bradley in his concurring opinion in the *Legal Tender Cases*, 12 Wall. 457, stated, at page 567:

> I do not understand the majority of the court to decide that an act so drawn as to embrace, in terms, contracts payable in specie, would not be constitutional. *Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie.* [Italics supplied.]

Similarly, if the Congress lacks power to regulate gold clause contracts employing gold generically, instead of gold coin, as the mode of payment or measure of the amount of payment in money of the United States, the powers admittedly vested in the Congress would be nullified by the substitution of a few words to make all contracts payable in an amount of money measured by gold. That the Congress has the power to strike down and prohibit the

future use of gold coin clauses cannot be challenged in view of the *Norman* case. Having that power, the Congress also has the power to prohibit devices in evasion of it, *Second Employers' Liability Cases*, 223 U. S. 1, 52, and to control cognate matters in order to make its regulation effective. *Purity Extract Co.* v. *Lynch*, 226 U. S. 192; *Westfall* v. *United States*, 274 U. S. 256, 259. But there is no need to rely on that basis of power. For, as has been shown, power over gold and gold payment clauses is as primary a power as that over gold coin and gold coin clauses.

It is a matter of common knowledge that in recent years in important commercial countries on the gold standard, redemption of currency in gold coin ceased;[5] in lieu thereof gold bullion is used to redeem currency in order to maintain parity and to regulate the value of the currency in the international field (see, for example, Sections 3, 5 and 6 (R. 65–67) of the Gold Reserve Act of 1934, c. 6, 48 Stat. 343, and Art. IV of the provisional regulations thereunder (R. 50)). This is commonly referred to as the "gold bullion standard." To

[5] The gold bullion standard was adopted in England by the Gold Standard Act, 1925; in France, by its monetary law of June 25, 1928. These laws appear in the Federal Reserve Bulletin, June 1925, p. 375, and August 1928, p. 570, respectively. The Bank of the Netherlands suspended the regular delivery of gold coins for domestic use on March 31, 1931. See *Annual Report of the Bank of the Netherlands* for the year ending on that date; and *Federal Reserve Bulletin*, August 1927, p. 596.

hold that the Congress is without power to deal with gold clause contracts employing gold as a mode of payment or measure of value would have the effect of preventing the Congress from dealing with the currency commensurately with the other great countries of the world and would deprive the United States of monetary powers which unquestionably are vested in every other nation.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decree of the Circuit Court of Appeals should be affirmed.

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DECEMBER 1936.

APPENDIX

PUBLIC RESOLUTIONS, No. 10, 73D CONGRESS, 1ST SESSION, APPROVED JUNE 5, 1933 (C. 48, 48 STAT., 112)

JOINT RESOLUTION To assure uniform value to the coins and currencies of the United States

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United

States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

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